IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2724 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VAKTAVAR MODAJ

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 2724 of 2002

MR NM KAPADIA for Petitioner No. 1

MR SAMIR DAVE AGP for Respondent No. 1,2 and 4

MS PJ DAVAWALA Addl. Central Govt. Standing Counsel for Respondent No. 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 04/04/2002

ORAL JUDGEMENT

1. By way of the present petition the petitioner has prayed for quashing and setting the the impugned detention order dated 11-1-2002 passed by the District Magistrate, Navsari and raised various grounds.

2. Initially rule was issued by this Court and pursuant to that, Mr. Samir Dave had appeared for the respondents no. 1, 2 and 4. Mr. P.J. Davawala has appeared on behalf of the respondent no. 4. Affidavit in reply has been filed by the Dy. Secretary, Govt. of Gujarat, Food, Civil Supplies and Consumer Affairs Department as also the Under Secretary, Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, New. Both these affidavits are ordered to be taken on record.

3. I have heard ld. counsel Mr. N.M. Kapadia, for the petitioner and Mr. Samir Dave, learned A.G.P. for the respondents No. 1,2 and 4 as well as Ms. P.J. Davawala, learned Addl. Central Govt. Standing Counsel for the respondent no. 3.

4. Learned counsel for the petitioner has argued that the petitioner has made a representation on 13-2-2002 by Regd. Post A.d. to the authority deamdning the copies of certain documents more particularly from respondent no.1. However, copies of the same have not been supplied by the authority concerned. Drawing my attention towards page No. 27 which is a copy of a representation dated 13-2-2002 and also towards other representation dated 16-2-2002 which was sent to the respondent no. 1 on 18-2-2000, has also argued that the representation dated 13-2-2002 has been rejected by the authority on 1-3-2002 and according to him, there is a delay in considering the representation.

5. I have considered the submissions made by the learned counsel for the parties. From the material on record, it is clearly established that the petitioner has made a representation on 13-2-2002 and the same has been rejected on 3-3-2002 and hence, according to the learned advocate for the petitioner there is a delay in considering the representation and in communicating the same to the petitioner. In support of his submission, the learned advocate for the petitioner has placed reliance upon the decision of the Hon'ble Supreme Court reported in AIR 1981 SC 1126, in which the Honourable Supreme Court has held as under :-

> "We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a

representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith."

6. Since the detaining authority has not decided the representation of the petitioner and not communicated the decision of the representation of the petitioner promptly, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

7. In view of the above discussion, this petition is allowed and the impugned detention order dated 11-1-2002 passed by the District Magistrate, Navsari, is hereby quashed and set aside. The petitioner - detenu Vaktavar Modaji is ordered to be released forthwith, if he is not required in any other case. Rule is made absolute, with no order as to costs. D.S. is permitted.

(R.P. Dholakia, J.)

/JVSatwara/